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IV. Construction of Constitutions

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IV. Construction of Constitutions

B. Construction in Conformity with Constitutional Language

1. In General

§ 71. Construction in conformity with language of constitution, generally

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West's Key Number Digest

West's Key Number Digest, Constitutional Law 580, 596

The duty and function of the court is to construe, not to adopt or rewrite, a constitution,[1] and a constitutional restriction is, within its defined limits, to be enforced according to its letter[2] and its spirit.[3] It is the duty and responsibility of the court to ascertain the meaning of the constitution as written, neither adding to nor subtracting from it, and neither deleting nor distorting the document.[4] A court's obligation is to give to the words of a constitution a reasonable interpretation consistent with the plain meaning understood by the ratifiers.[5]

Footnotes

1 State ex rel. Randolph County v. Walden, 357 Mo. 167, 206 S.W.2d 979 (1947).

2 Union Free School Dist. No. 3 of Town of Rye, Westchester County, v. Town of Rye, 280 N.Y. 469, 21 N.E.2d 681 (1939).

3 § 72.

4 Rankin v. Love, 125 Mont. 184, 232 P.2d 998 (1951).

5 County Road Ass'n of Michigan v. Governor, 474 Mich. 11, 705 N.W.2d 680 (2005).

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IV. Construction of Constitutions

B. Construction in Conformity with Constitutional Language

1. In General

§ 72. Consideration of spirit of constitution and constitutional provisions, as against letter

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Constitutional Law 586

A constitution must be interpreted and given effect as the paramount law of the state, according to both the spirit and intent of its framers.[1] The true aim of constitutional interpretation, both as to grants of powers and with respect to prohibitions and limitations, is to give a full, liberal construction to the language, aiming ever to show fidelity to the spirit and purpose of the document.[2] Thus, whatever meaning ultimately is attributed to a constitutional provision may not violate the spirit of that provision.[3] A court will not go outside the plain language of a constitutional provision unless the intent of its language is unclear; where the language is unclear, however, the court may then look to the context, effect, consequences, and spirit of the law.[4]

Whenever language is not explicit or admits of doubt, it is presumed that it is intended to be in accordance with the acknowledged principles of justice and liberty even though, according to some views, this would require a deviation from the strict letter.[5] A constitutional provision should receive a fair and liberal construction not only according to its letter[6] but also to its true spirit and the general purpose of its enactment,[7] and the interpretation of constitutional principles must not be too literal.[8] Thus, in construing the state constitution, the court may consider a provision's history, the conditions and spirit of the times in which it was adopted, the prevailing sentiments of the people who framed and adopted it, the evils intended to be remedied, and the good to be accomplished; but the court relies heavily on the literal text.[9]

In interpreting constitutional provisions, the courts should consider the substance of things rather than mere matters of form or of technical procedure.[10] In the interpretation of constitutional provisions, it is also true that words are often limited and

restrained to a scope and effect somewhat narrower than their literal import on a presumption against an intent to interfere with or innovate upon well-established and generally recognized rules and principles of public policy not expressly abolished.[11] On the other hand, although the spirit and true meaning of a constitution will govern in its construction, they must be very apparent to overrule words actually used therein.[12] Thus, a case falling within the words of a constitutional provision must also be within its operation unless there is something in the literal construction so obviously absurd, mischievous, or repugnant to the general spirit of the constitutional instrument as to justify an exception.[13] The spirit of a constitution cannot consist of mere sophistry or fanciful or conjectural theory but must be found in those implications and intendments which clearly flow from the express mandates of the constitution as considered in the light of circumstances and historical events leading up to its adoption.[14]

Footnotes

1 State ex rel. Stephan v. Parrish, 256 Kan. 746, 887 P.2d 127 (1994).
Constitutional language is to be interpreted according to the spirit of the instrument as well as the obvious and plain meaning of its words. Walmsley v. McCuen, 318 Ark. 269, 885 S.W.2d 10 (1994).
A constitution must be construed so as to carry out its spirit, avoiding legal technicalities and subtle niceties. State ex rel. Udall v. Colonial Penn Ins. Co., 1991-NMSC-048, 112 N.M. 123, 812 P.2d 777 (1991).

2 Walmsley v. McCuen, 318 Ark. 269, 885 S.W.2d 10 (1994); State ex rel. Udall v. Colonial Penn Ins. Co., 1991-NMSC-048, 112 N.M. 123, 812 P.2d 777 (1991).

3 Miller v. Burk, 124 Nev. 579, 188 P.3d 1112 (2008).

4 State v. Superior Court In and For County of Maricopa, 186 Ariz. 363, 922 P.2d 927 (Ct. App. Div. 1 1996).

5 Berry v. Gordon, 237 Ark. 547, 237 Ark. 865, 376 S.W.2d 279 (1964).

6 Florida League of Cities v. Smith, 607 So. 2d 397 (Fla. 1992).

7 Walmsley v. McCuen, 318 Ark. 269, 885 S.W.2d 10 (1994); Firing v. Kephart, 18 Pa. Commw. 578, 336 A.2d 470 (1975), order aff'd, 466 Pa. 560, 353 A.2d 833 (1976); Witzenburger v. State ex rel. Wyoming Community Development Authority, 575 P.2d 1100 (Wyo. 1978).

8 Griffin v. Vandegriff, 205 Ga. 288, 53 S.E.2d 345 (1949).

9 Eddington v. Dallas Police and Fire Pension System, 589 S.W.3d 799 (Tex. 2019).

10 Hooven & Allison Co. v. Evatt, 324 U.S. 652, 65 S. Ct. 870, 89 L. Ed. 1252 (1945) (overruled on other grounds by, Limbach v. Hooven & Allison Co., 466 U.S. 353, 104 S. Ct. 1837, 80 L. Ed. 2d 356 (1984)).
Constitutional analysis is not a "legalistic minuet" in which precise rules and forms govern; rather, the court must examine the form of the relationship for the light that it casts on the substance. Committee For Public Ed. and Religious Liberty v. Nyquist, 413 U.S. 756, 93 S. Ct. 2955, 37 L. Ed. 2d 948 (1973).

11 State v. Linares, 232 Conn. 345, 655 A.2d 737 (1995).
As to construction to avoid absurd results, see § 77.

12 Cohens v. State of Virginia, 19 U.S. 264, 5 L. Ed. 257, 1821 WL 2186 (1821).

13 Trustees of Dartmouth College v. Woodward, 17 U.S. 518, 4 L. Ed. 629, 1819 WL 2201 (1819); Parkinson v. Watson, 4 Utah 2d 191, 291 P.2d 400 (1955).

14 Sullivan v. City of Tampa, 101 Fla. 298, 134 So. 211 (1931).

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IV. Construction of Constitutions

B. Construction in Conformity with Constitutional Language

2. Effect of Implications

§ 73. Effect of implication in constitutional construction, generally

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Constitutional Law 591, 594, 601

Since constitutions must of necessity be general rather than detailed and prolix,[1] many of the essentials with which they treat are impliedly controlled or dealt with by them, and implication plays a very important part in constitutional construction.[2] In construing the Constitution of the United States, what is implied is as much a part of the instrument as what is expressed.[3] The rule is equally applicable to the construction of state constitutions.[4] All power necessary to render effective a provision of a constitution is held to be implied and intended in the provision itself.[5] Thus, where a constitution confers a power or enjoins a duty, it also confers by implication all powers that are necessary for the exercise of the one or for the performance of the other.[6] For example, the absence, in the Federal Constitution, of a provision for a presidential privilege as to a president's communications corresponding to the privilege of members of Congress under the speech or debate clause of the Constitution is not dispositive of the presidential privilege since that which is reasonably appropriate and relevant to the exercise of a granted power is considered as accompanying the grant.[7]

The intent of a constitution may be shown by the implications, as well as by the words of express provisions.[8] However, it is presumed that the words employed in a constitution have been carefully measured and weighed to convey a certain and definite meaning with as little as possible left to implication.[9]

The fact that some degree of implication must be given to words is a proposition of universal adoption as implication is only another term for meaning and intention apparent in the writing on judicial inspection.[10]

An implication will not be read into a constitutional amendment where prior similar amendments contain express provisions regarding the matter in question.[11] Further, a grant of enlarged power by a constitutional provision will not be rested upon doubtful implication arising from the omission of a previous express limitation, at least unless it appears that the omission and its significance was called to the attention of the people.[12]

Footnotes

1 § 3.

2 State ex rel. Green v. Collison, 39 Del. 245, 197 A. 836 (Super. Ct. 1938), judgment rev'd on other grounds, 39 Del. 460, 2 A.2d 97, 119 A.L.R. 1422 (1938); People ex rel. Battista v. Christian, 131 Misc. 411, 227 N.Y.S. 142 (Sup 1928), rev'd on other grounds, 224 A.D. 243, 229 N.Y.S. 644 (3d Dep't 1928), rev'd on other grounds, 249 N.Y. 314, 164 N.E. 111, 61 A.L.R. 793 (1928).
As to the implied powers of Congress under the Federal Constitution, see §§ 222, 223.
As to implied repeal or abrogation of a constitutional provision by a conflicting amendment, see § 68.

3 Dillon v. Gloss, 256 U.S. 368, 41 S. Ct. 510, 65 L. Ed. 994 (1921); Luria v. U.S., 231 U.S. 9, 34 S. Ct. 10, 58 L. Ed. 101 (1913).

4 Wade v. Nolan, 414 P.2d 689 (Alaska 1966); State ex rel. Moore v. Blankenship, 158 W. Va. 939, 217 S.E.2d 232 (1975).

5 Livoti v. Fitzgerald, 255 A.D. 711, 5 N.Y.S.2d 588 (2d Dep't 1938), (Note: Decisions combined in N.Y.S.2d) and amended on other grounds, 255 A.D. 720, 1938 WL 33451 (2d Dep't 1938), (Note: Decisions combined in N.Y.S.2d) and order aff'd, 279 N.Y. 696, 18 N.E.2d 319 (1938).

6 Newton v. Lewis, 118 Misc. 382, 193 N.Y.S. 438 (Sup 1922), aff'd, 203 A.D. 395, 196 N.Y.S. 711 (3d Dep't 1922), aff'd, 239 N.Y. 528, 147 N.E. 181 (1924).

7 U.S. v. Nixon, 418 U.S. 683, 94 S. Ct. 3090, 41 L. Ed. 2d 1039 (1974).

8 State ex rel. West v. Gray, 74 So. 2d 114 (Fla. 1954).

9 Gangemi v. Berry, 25 N.J. 1, 134 A.2d 1 (1957).

10 Payne v. Davis, 254 S.W.2d 710 (Ky. 1953).

11 Fitzgerald v. Cohen, 175 Misc. 148, 22 N.Y.S.2d 863 (Sup 1940), order aff'd, 260 A.D. 804, 22 N.Y.S.2d 527 (2d Dep't 1940).

12 Kuhn v. Curran, 294 N.Y. 207, 61 N.E.2d 513 (1945).

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IV. Construction of Constitutions

B. Construction in Conformity with Constitutional Language

2. Effect of Implications

§ 74. Implications in construction of constitution from words of limitation and grant; words of limitation

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Constitutional Law 594

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Validity, Construction, and Operation of Constitutional and Statutory "Term Limits" Provisions, 112 A.L.R.5th 1

The maxim "expressio unius est exclusio alterius," meaning that the expression of one thing implies the exclusion of another thing not mentioned,[1] is a proper principle in constitutional construction.[2] However, in some states, the maxim does not apply with the same force to a constitution as to a statute.[3] There are many exceptions to the rule,[4] and it should be used sparingly.[5]

The maxim is not a rule of law, but rather one of construction,[6] used as a tool to cut through ambiguities to lay bare the intendment of a provision.[7] In at least one state, the maxim applies to provisions of the state constitution that expressly limit power, but it does not apply to provisions that merely enumerate powers.[8] The maxim should never be applied to override the manifest intention of a provision of a constitution.[9]

Since the legislative power is plenary, the courts must proceed with much caution in applying such maxim to the legislative department,[10] as, for example, in connection with its taxing power.[11] Moreover, the maxim does not mean, where two powers are not inconsistent, that the granting or affirmance of one of them is a prohibition of the exercise of the other.[12] As examples of the maxim's application, the United States Supreme Court has held that the House of Representatives could not add to the qualifications specified in the United States Constitution to serve as a House member,[13] and a state supreme court has held that a state may not impose term limits on United States senators and representatives because this results in the imposition and addition of new qualifications to those stated in the United States Constitution.[14]

Closely allied to the above maxim or rule or, perhaps, merely an alternative means of expressing it is the statement of some courts that exceptions or provisos in a constitution will be narrowly and strictly construed and will be limited to objects fairly within their terms.[15] This rule is exemplified by provisions for exemption from taxation.[16] A proviso does not enlarge or extend the section of the constitution of which it is a part but is rather a limitation or restraint upon the language which the legislature or the framers of the constitution employed.[17]

Another important canon of construction of a similar nature which is frequently applied to constitutions is that the limitations of a power furnish a strong argument in favor of the existence of that power.[18] Where a restriction is not general but is stated in connection with a specific situation, its application will not be carried to other situations.[19] Further, where a qualifying word or phrase is found in one provision and not in some other provision, the presumption is that the other provision was not intended to have such qualification.[20] That which clearly falls within the reason of a constitutional prohibition may be regarded as embodied within it.[21] However, where a constitutional provision is prohibitory in nature, it cannot mechanically be inferred that what was not prohibited is thereby affirmatively guaranteed, but the decision to prohibit is simply a decision to foreclose a contrary view as to the area dealt with and what is left untouched remains within the jurisdiction of government.[22]

Footnotes

1 Walzer v. Osborne, 395 Md. 563, 911 A.2d 427 (2006).

2 Poison Creek Pub., Inc. v. Central Idaho Pub., Inc., 134 Idaho 426, 3 P.3d 1254 (Ct. App. 2000); Cathcart v. Meyer, 2004 WY 49, 88 P.3d 1050 (Wyo. 2004).

3 Gangemi v. Berry, 25 N.J. 1, 134 A.2d 1 (1957); Myers v. Oklahoma Tax Commission, 1956 OK 291, 303 P.2d 443 (Okla. 1956).
As to the application of the maxim in the construction of statutes, generally, see Am. Jur. 2d, Statutes §§ 120, 121.

4 Rossi v. Brown, 9 Cal. 4th 688, 38 Cal. Rptr. 2d 363, 889 P.2d 557 (1995).

5 Bush v. Holmes, 767 So. 2d 668, 147 Ed. Law Rep. 1125 (Fla. 1st DCA 2000), decision disapproved of on other grounds, 919 So. 2d 392, 206 Ed. Law Rep. 756 (Fla. 2006).

6 Walzer v. Osborne, 395 Md. 563, 911 A.2d 427 (2006); Monson v. Carver, 928 P.2d 1017 (Utah 1996).

7 State ex rel. Jackman v. Court of Common Pleas of Cuyahoga County, 9 Ohio St. 2d 159, 38 Ohio Op. 2d 404, 224 N.E.2d 906 (1967).

8 Idaho Press Club, Inc. v. State Legislature of the State, 142 Idaho 640, 132 P.3d 397 (2006).

9 Walzer v. Osborne, 395 Md. 563, 911 A.2d 427 (2006).

10 State ex rel. Jackman v. Court of Common Pleas of Cuyahoga County, 9 Ohio St. 2d 159, 38 Ohio Op. 2d 404, 224 N.E.2d 906 (1967); State ex rel. McCormack v. Foley, 18 Wis. 2d 274, 118 N.W.2d 211 (1962).

11 Kramar v. Bon Homme County, 83 S.D. 112, 155 N.W.2d 777 (1968).

12 In re Opinion to the Governor, 55 R.I. 56, 178 A. 433 (1935).

13 Powell v. McCormack, 395 U.S. 486, 89 S. Ct. 1944, 23 L. Ed. 2d 491 (1969).

14 U.S. Term Limits, Inc. v. Hill, 316 Ark. 251, 872 S.W.2d 349 (1994), judgment aff'd, 514 U.S. 779, 115 S. Ct. 1842, 131 L. Ed. 2d 881 (1995).

15 Wirtz v. Phillips, 251 F. Supp. 789 (W.D. Pa. 1965); In re Advisory Opinion to Governor, 313 So. 2d 717 (Fla. 1975); Com. v. Yee, 361 Mass. 533, 281 N.E.2d 248 (1972).

If an exception to a constitutional provision is articulated or perceived, it is to be narrowly and strictly construed. Simms v. Oedekoven, 839 P.2d 381 (Wyo. 1992).

16 Cedars of Lebanon Hospital v. Los Angeles County, 35 Cal. 2d 729, 221 P.2d 31, 15 A.L.R.2d 1045 (1950).

As to construction of tax exemption provisions, generally, see Am. Jur. 2d, State and Local Taxation §§ 229 to 233.

17 In re Advisory Opinion to Governor, 313 So. 2d 717 (Fla. 1975).

18 Gibbons v. Ogden, 22 U.S. 1, 6 L. Ed. 23, 1824 WL 2697 (1824).

A constitutional provision prohibiting the legislature from remitting fines, penalties, and forfeitures "by special law," implies power to remit them by general laws. Jones v. Williams, 121 Tex. 94, 45 S.W.2d 130, 79 A.L.R. 983 (1931).

19 State v. Grant Superior Court, 202 Ind. 197, 172 N.E. 897, 71 A.L.R. 1354 (1930); State v. Hawkins, 79 Mont. 506, 257 P. 411, 53 A.L.R. 583 (1927).

20 Thompson v. Talmadge, 201 Ga. 867, 41 S.E.2d 883 (1947).

21 Kraus v. City of Cleveland, 42 Ohio Op. 490, 58 Ohio L. Abs. 353, 94 N.E.2d 814 (C.P. 1950), decree aff'd by, 89 Ohio App. 504, 46 Ohio Op. 132, 58 Ohio L. Abs. 360, 96 N.E.2d 314 (8th Dist. Cuyahoga County 1950).

22 Reilly v. Ozzard, 33 N.J. 529, 166 A.2d 360, 89 A.L.R.2d 612 (1960).

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IV. Construction of Constitutions

B. Construction in Conformity with Constitutional Language

2. Effect of Implications

§ 75. Implications in construction of constitution from words of limitation and grant; words of limitation—Words of grant

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West's Key Number Digest

West's Key Number Digest, Constitutional Law 594

A constitution is a written instrument, and its meaning does not change and that which it meant when adopted, it means now.[1] Those things which are within grants of power as the grants were understood when made are still within them and those things not then within them remain still excluded.[2] Where the means for the exercise of a granted power are given in a constitution, no other or different means can be implied as being more effectual or convenient,[3] for where a power is expressly given by a constitution and the mode of its exercise is prescribed, such mode is exclusive[4] of all others.[5] Thus, in the grants of powers and in the regulation of the mode of their exercise, there is an implied negative—an implication that no other than the expressly granted powers passes by the grant[6] and that they are to be exercised only in the prescribed mode.[7] Further, under the nondelegation doctrine, the validity of the power sought to be vested must be measured by the scope of the grant of power, not the extent to which it has been exercised.[8] Constitutional grants of power should be strictly construed although this does not mean that a grant of power can be ignored.[9] Grants of power made in a constitution cannot be taken away by the legislature.[10]

Under the "rational basis review" test, so long as an Act of Congress bears some reasonable relationship to the grant of power to the national government, and it is not otherwise prohibited by the Constitution, a reviewing court must find the law to be necessary and proper.[11] The negative corollary of affirmative grants of power to Congress in Art. I, § 8 of the Constitution is that those powers not listed do not belong to Congress.[12]

Footnotes

1 Zangerle v. City of Cleveland, Division of Municipal Transp., 145 Ohio St. 347, 30 Ohio Op. 567, 61 N.E.2d 720 (1945) (overruled in part on other grounds by, City of Cleveland v. Board of Tax Appeals, 167 Ohio St. 263, 4 Ohio Op. 2d 309, 147 N.E.2d 663 (1958)).

2 Zangerle v. City of Cleveland, Division of Municipal Transp., 145 Ohio St. 347, 30 Ohio Op. 567, 61 N.E.2d 720 (1945) (overruled in part on other grounds by, City of Cleveland v. Board of Tax Appeals, 167 Ohio St. 263, 4 Ohio Op. 2d 309, 147 N.E.2d 663 (1958)).

3 Ellingham v. Dye, 178 Ind. 336, 99 N.E. 1 (1912); State ex rel. Edwards v. Osborne, 195 S.C. 295, 11 S.E.2d 260 (1940); Jones v. Williams, 121 Tex. 94, 45 S.W.2d 130, 79 A.L.R. 983 (1931).

4 Martello v. Superior Court in and for Los Angeles County, 202 Cal. 400, 261 P. 476 (1927); Village of Perrysburg v. Ridgway, 108 Ohio St. 245, 1 Ohio L. Abs. 484, 1 Ohio L. Abs. 865, 140 N.E. 595 (1923); Crabb v. Celeste Independent School Dist., 105 Tex. 194, 146 S.W. 528 (1912).

5 People ex rel. Mooney v. Hutchinson, 172 Ill. 486, 50 N.E. 599 (1898); Denney v. State ex rel. Basler, 144 Ind. 503, 42 N.E. 929 (1896); City of Sapulpa v. Land, 1924 OK 92, 101 Okla. 22, 223 P. 640, 35 A.L.R. 872 (1924).

6 Thompson v. Committee on Legislative Research, 932 S.W.2d 392 (Mo. 1996).

7 Michigan Protection and Advocacy Service, Inc. v. Babin, 799 F. Supp. 695 (E.D. Mich. 1992), aff'd, 18 F.3d 337, 4 A.D.D. 1060, 1994 FED App. 0075P (6th Cir. 1994); Martello v. Superior Court in and for Los Angeles County, 202 Cal. 400, 261 P. 476 (1927).

8 D.P. v. State, 597 So. 2d 952 (Fla. 1st DCA 1992) (disapproved of on other grounds by, B.H. v. State, 645 So. 2d 987, 46 A.L.R.5th 877 (Fla. 1994)).

9 Williams v. Morris, 320 S.C. 196, 464 S.E.2d 97 (1995).

10 Livingston County Bd. of Social Services v. Department of Social Services, 208 Mich. App. 402, 529 N.W.2d 308 (1995).

11 U.S. v. Yian, 905 F. Supp. 160 (S.D. N.Y. 1995), aff'd, 134 F.3d 79 (2d Cir. 1998).

12 Michigan Protection and Advocacy Service, Inc. v. Babin, 799 F. Supp. 695 (E.D. Mich. 1992), aff'd, 18 F.3d 337, 4 A.D.D. 1060, 1994 FED App. 0075P (6th Cir. 1994).

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IV. Construction of Constitutions

B. Construction in Conformity with Constitutional Language

3. Meaning of Terminology

§ 76. Ordinary, natural, plain, or usual meaning of words in construing constitutional provision

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Constitutional Law 591, 592

Courts presume the language of a constitution was carefully selected, and words are interpreted as they are generally understood.[1] Courts assume that the framers of a constitutional provision and the people who caused it to become part of the constitution intended ordinary meanings for the words in the provision.[2] Thus, in giving effect to the intent of the electorate when construing a constitutional provision, a court looks to the words used, reading them in context,[3] and according them their plain, ordinary, and usually accepted meaning[4] unless the context furnishes some ground to control, qualify, or enlarge them.[5] A constitution must be read and understood according to the most natural and obvious meaning of the language in order to avoid eliminating or extending its operation.[6] The words of the constitution must be taken to mean what they most directly and aptly express in their usual and popular significance and not in a vague and general sense,[7] and in construing a constitution, the courts seek the meaning that such words would convey to an intelligent, careful voter.[8] When a court seeks to ascertain the meaning of a constitutional provision, it first looks to the normal, plain meaning of the language and if the language is clear and unambiguous, it will not look further.[9] The courts are not at liberty to disregard the plain meaning of the words of a constitution in order to search for some other conjectured intent.[10] When constitutional language is precise, its exact letter must be enforced and extrinsic guides to construction are not allowed to defeat the plain language.[11]

When seeking to discern the meaning of a word in the Constitution of the United States, there is no better dictionary than the rest of the Constitution itself.[12] However, in giving undefined words in the state constitution their usual, normal, or customary meaning, the supreme court relies on their dictionary definitions.[13] A dictionary may provide the popular and commonsense

meaning of terms presented to the voters in a constitutional provision[14] although such definitions are not necessarily a reliable guide.[15] In construing constitutional language, if the dictionary does not conclusively point to a definition advanced by either party in litigation, a court may rely on the principles of statutory construction to determine which definition should be adopted.[16]

It is presumed that if the authors of a state constitution used two different words, they intended two different meanings.[17]

Disjunctive words, such as "or," will be given their ordinary construction unless there is an obvious intention to the contrary on the part of the framers of the provision[18] or unless the ordinary meaning would produce a result that is absurd,[19] impossible of execution, or highly unreasonable or one that would manifestly change or nullify the intention of the framers of the provision.[20] Where a phrase has acquired a well-defined meaning in legislative enactments, it will be presumed that it retains the same meaning when incorporated into a constitutional provision[21] unless the context indicates that it was intended to convey a different idea.[22]

Footnotes

1 Harris County Hosp. Dist. v. Tomball Regional Hosp., 283 S.W.3d 838 (Tex. 2009).

2 State v. Cervantes-Oropeza, 215 Or. App. 518, 170 P.3d 1114 (2007).

3 U.S. v. Balsys, 524 U.S. 666, 118 S. Ct. 2218, 141 L. Ed. 2d 575, 49 Fed. R. Evid. Serv. 371 (1998); Maddux v. Blagojevich, 233 Ill. 2d 508, 331 Ill. Dec. 749, 911 N.E.2d 979 (2009); George v. Courtney, 344 Or. 76, 176 P.3d 1265 (2008).

4 Maddux v. Blagojevich, 233 Ill. 2d 508, 331 Ill. Dec. 749, 911 N.E.2d 979 (2009); Freeman v. St. Andrew Orthodox Church, Inc., 294 S.W.3d 425 (Ky. 2009); Viveiros v. Town of Middletown, 973 A.2d 607 (R.I. 2009).

The U.S. Constitution was written to be understood by the voters, and its words and phrases were used in their normal and ordinary as distinguished from technical meaning; a normal meaning may include an idiomatic meaning, but it excludes secret or technical meanings that would not have been known to ordinary citizens in the founding generation. District of Columbia v. Heller, 554 U.S. 570, 128 S. Ct. 2783, 171 L. Ed. 2d 637 (2008).

The cardinal rule of constitutional interpretation is to begin with the plain language of the provision in question. University of Utah v. Shurtleff, 2006 UT 51, 144 P.3d 1109, 213 Ed. Law Rep. 832 (Utah 2006).

5 Sierra Club v. Department of Transportation of State of Hawai'i, 120 Haw. 181, 202 P.3d 1226 (2009), as amended, (May 13, 2009).

6 Maddux v. Blagojevich, 233 Ill. 2d 508, 331 Ill. Dec. 749, 911 N.E.2d 979 (2009).

7 Cahan v. McNamara, 192 Misc. 453, 81 N.Y.S.2d 351 (Sup 1948), order aff'd, 298 N.Y. 713, 83 N.E.2d 14 (1948).

8 Opinion of the Justices, 673 A.2d 1291 (Me. 1996).

9 Mayor & City Council of Baltimore v. Clark, 404 Md. 13, 944 A.2d 1122 (2008).

10 American Youth Foundation v. Benona Tp., 8 Mich. App. 521, 154 N.W.2d 554 (1967).

As to the necessity of construction, generally, see § 65.

11 Brinkmann v. Francois, 184 So. 3d 504 (Fla. 2016).

12 Baca v. Colorado Department of State, 935 F.3d 887 (10th Cir. 2019), cert. granted, 140 S. Ct. 918 (2020).

13 City of Cleveland v. State, 157 Ohio St. 3d 330, 2019-Ohio-3820, 136 N.E.3d 466 (2019).

14 Israel v. Desantis, 269 So. 3d 491 (Fla. 2019).

The commonly understood meaning of a word used in a constitutional amendment approved by voters can be found in the dictionary. Johnson v. State, 366 S.W.3d 11 (Mo. 2012).

15 Whateley v. Leonia Bd. of Ed., 141 N.J. Super. 476, 358 A.2d 826 (Ch. Div. 1976).

16 Zachman v. Whirlpool Financial Corp., 123 Wash. 2d 667, 869 P.2d 1078 (1994).

17 Torgelson v. Real Property Known as 17138 880th Ave., Renville County, 749 N.W.2d 24 (Minn. 2008).

18 Garvey v. Trew, 64 Ariz. 342, 170 P.2d 845 (1946); People v. Anderson, 6 Cal. 3d 628, 100 Cal. Rptr. 152, 493 P.2d 880 (1972) (rejected on other grounds by, State v. Ramseur, 106 N.J. 123, 524 A.2d 188 (1987)).

19 § 77.

20 Com. ex rel. Specter v. Vignola, 446 Pa. 1, 285 A.2d 869 (1971).

21 Northwestern Mut. Life Ins. Co. v. Roberts, 177 Cal. 540, 171 P. 313 (1918).

22 Sacramento County v. Hickman, 66 Cal. 2d 841, 59 Cal. Rptr. 609, 428 P.2d 593 (1967).

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IV. Construction of Constitutions

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§ 77. Avoidance of narrow, technical, or absurd construction of constitutional provision

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Constitutional Law 591, 592

In accordance with the basic rules that language in a constitution is to be deemed to have been used therein in its ordinary sense,[1] the principle has been developed that the framers of a constitution are assumed to have employed the words used therein in a comprehensive sense as expressive of general ideas rather than of finer shades of thought or of narrow distinctions,[2] and ordinarily, words in an instrument such as the United States Constitution or a state constitution are not construed as having a narrow, contracted meaning but are presumed to have been used in a broad sense, with a view of covering all contingencies.[3] Where words are used which have both a restricted and a general meaning, the general must prevail over the restricted unless the nature of the subject matter of the context clearly indicates that the limited sense is intended.[4]

Stated differently, the rule is that no forced, strained, unnatural,[5] narrow, or technical construction should ever be placed upon the language of a constitution.[6] Neither should the judiciary indulge in or follow any ingenious refinements or subtlety of reasoning as to the meaning of its provisions.[7] A court will not construe a constitutional provision to arrive at a strained,[8] unpractical,[9] or absurd result.[10]

Footnotes

1 § 76.

2 Commonwealth v. Nickerson, 236 Mass. 281, 128 N.E. 273, 10 A.L.R. 1568 (1920).
Ordinarily, courts do not construe words used in the Constitution so as to give them a narrower meaning than the one which they had in the common parlance of the times in which the Constitution was written. U.S. v. South-Eastern Underwriters Ass'n, 322 U.S. 533, 64 S. Ct. 1162, 88 L. Ed. 1440 (1944).
In determining the meaning of terms in a constitution, a court must bear in mind that a constitution is not made for the parsing of lawyers but for the instruction of the people so that they may read and understand their rights and their duties. In re Assessment of Personal Property Taxes Against Missouri Gas Energy, Div. of Southern Union Co., for Tax Years 1998, 1999, and 2000, 2008 OK 94, 234 P.3d 938 (Okla. 2008).

3 In re Strauss, 197 U.S. 324, 25 S. Ct. 535, 49 L. Ed. 774 (1905); Hupp v. Hock-Hocking Oil & Natural Gas Co., 88 Ohio St. 61, 101 N.E. 1053 (1913).

4 Gaiser v. Buck, 203 Ind. 9, 179 N.E. 1, 82 A.L.R. 1348 (1931); Flaska v. State, 1946-NMSC-035, 51 N.M. 13, 177 P.2d 174 (1946).

5 Colorado State Civil Service Emp. Ass'n v. Love, 167 Colo. 436, 448 P.2d 624 (1968); Jubelirer v. Rendell, 598 Pa. 16, 953 A.2d 514 (2008).

6 State ex rel. Stephan v. Finney, 254 Kan. 632, 867 P.2d 1034 (1994); Lepak v. McClain, 1992 OK 166, 844 P.2d 852 (Okla. 1992).
As to the meaning to be given constitutional language which is itself technical, see § 78.

7 DuPont v. DuPont, 32 Del. Ch. 413, 85 A.2d 724 (1951).

8 Brendtro v. Nelson, 2006 SD 71, 720 N.W.2d 670 (S.D. 2006).

9 Brendtro v. Nelson, 2006 SD 71, 720 N.W.2d 670 (S.D. 2006).

10 Gray v. Mitchell, 373 Ark. 560, 285 S.W.3d 222, 246 Ed. Law Rep. 457 (2008); Brendtro v. Nelson, 2006 SD 71, 720 N.W.2d 670 (S.D. 2006); Cantrell v. Sweetwater County School Dist. No. 2, 2006 WY 57, 133 P.3d 983, 208 Ed. Law Rep. 906 (Wyo. 2006).
The principle that clear constitutional language does not need construction is subject to the exception that the literal language of a constitutional amendment may be disregarded to avoid absurd results and to give effect to the apparent intent of the voters. Neilson v. City of California City, 133 Cal. App. 4th 1296, 35 Cal. Rptr. 3d 453 (5th Dist. 2005).

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IV. Construction of Constitutions

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§ 78. Construction of words having technical or legal connotation in a constitution

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Constitutional Law 591, 592

The general rule that constitutional language should be interpreted in accordance with its ordinary or usual meaning[1] does not apply to technical or legal words and phrases which necessarily should be given a technical significance.[2] Thus, in defining the terms used in constitutional enactments, courts give words that have well-defined legal meanings those meanings.[3]

Where a word in a constitutional provision has a technical as well as a popular meaning, the courts will generally accord to it its popular signification, unless the nature of the subject indicates or context suggests that the word is used in a technical sense.[4] Technical terms in a constitution applicable to a particular profession or business will be interpreted as they are usually understood by persons in such profession or business unless the words are clearly used in a different sense.[5]

Footnotes

1 § 76.

2 State ex rel. Johnson v. Gale, 273 Neb. 889, 734 N.W.2d 290 (2007).
Seeking the common understanding of the people at the time the constitution was ratified involves applying the plain meaning of each term used at the time of ratification, unless technical, legal terms are used. Paquin v. City of St. Ignace, 504 Mich. 124, 934 N.W.2d 650 (2019).

In interpreting a state constitution, technical legal terms must be interpreted in light of the meaning that those sophisticated in the law would have given those terms at the time of ratification. Michigan Dept. of Transp. v. Tomkins, 481 Mich. 184, 749 N.W.2d 716 (2008).

3 Shineovich and Kemp, 229 Or. App. 670, 214 P.3d 29 (2009).

4 Georgia Motor Trucking Association v. Georgia Department of Revenue, 301 Ga. 354, 801 S.E.2d 9 (2017).

5 In re Quinn, 35 Cal. App. 3d 473, 110 Cal. Rptr. 881 (5th Dist. 1973) (disapproved of on other grounds by, State of California v. San Luis Obispo Sportsman's Assn., 22 Cal. 3d 440, 149 Cal. Rptr. 482, 584 P.2d 1088 (1978)).

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3. Meaning of Terminology

§ 79. Construction of constitutional provisions with reference to common law

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Constitutional Law 613

When construing a constitutional provision, a court may consult common-law principles[1] although the reverse is not necessarily true[2] since, in most respects, the Federal and State Constitutions did not repudiate but cherished the established common law.[3] In other words, where a right enshrined in the constitution was one found at common law, that constitutional right is understood with reference to the common law, absent some clear textual indication to the contrary.[4]

Provisions of the Federal Constitution have been interpreted by reference to the common law in existence at the time of the writing of that document.[5] This is because the United States Constitution and the plan of government of the United States were founded on the common law as established in England at the time of the Revolution.[6] Therefore, it is a general rule that phrases in the Bill of Rights taken from the common law must be construed in reference to the latter.[7]

The constitutional prerogatives of sheriffs under some state constitutions, for example, are limited to the immemorial, principal, and important duties of the sheriff that were unique to the office of sheriff at common law and gave character and distinction to the office.[8] A number of courts have referred to the common-law right to trial by jury in interpreting constitutional provisions granting or preserving such a right.[9] Furthermore, in determining whether compelling reasons exist to construe a state constitutional provision so as to provide greater rights than those afforded by the Federal Constitution, one factor which may be considered includes any common-law history and state laws preexisting the constitutional provision.[10]

Whether a clause in a constitution is to be restricted by the rules of the English law as they existed when the constitution was adopted depends upon the terms or the nature of the particular clause in question.[11] Where the scope and meaning of a constitutional provision depend upon the common-law rule existing at the time of its adoption, the rule is to be determined as it existed at that time without respect to subsequent changes therein.[12] It is apparent, therefore, that the common law does not govern the construction of all constitutional provisions, and the Supreme Court has declared that in applying the doctrine which justifies recourse to the common law for constitutional construction, that doctrine, like other canons of construction, must yield to more compelling reasons whenever they exist.[13] Such compelling reasons include incongruity with the intent of the adopters or alteration of the plain purpose of the provisions or the constitutional framers' deliberate intention to change the common-law rule.[14]

Manifestly, where a constitution is in conflict with the common law, the former will prevail over the latter; and this is so, whether the conflict is as to a right or a remedy.[15] The application of the doctrine is further subject to the qualification that the common-law rule, if and when invoked, will be one not rejected by our ancestors as unsuited to their civil or political condition.[16]

Footnotes

1 State ex rel. Juvenile Department of Washington County v. Deford, 177 Or. App. 555, 34 P.3d 673 (2001); Ex parte Austin Independent School Dist., 23 S.W.3d 596, 146 Ed. Law Rep. 580 (Tex. App. Austin 2000), petition for discretionary review refused, (Nov. 28, 2001).
In order to ascertain the scope and meaning of the Seventh Amendment, resort must be had to the appropriate rules of the common law established at the time of the adoption of that constitutional provision in 1791. Dimick v. Schiedt, 293 U.S. 474, 55 S. Ct. 296, 79 L. Ed. 603, 95 A.L.R. 1150 (1935).

2 City of Beaumont v. Bouillion, 896 S.W.2d 143 (Tex. 1995).

3 Meeks v. Johnston, 85 Fla. 248, 95 So. 670 (1923).

4 City of College Park v. Clayton County, 306 Ga. 301, 830 S.E.2d 179 (2019).

5 Ex parte Grossman, 267 U.S. 87, 45 S. Ct. 332, 69 L. Ed. 527, 38 A.L.R. 131 (1925).

6 Waring v. Clarke, 46 U.S. 441, 5 How. 441, 12 L. Ed. 226, 1847 WL 5991 (1847); Orick v. State, 140 Miss. 184, 105 So. 465, 41 A.L.R. 1129 (1925); State v. Harp, 320 Mo. 1, 6 S.W.2d 562 (1928).

7 Kepner v. U.S., 195 U.S. 100, 24 S. Ct. 797, 49 L. Ed. 114 (1904).
A construction according to the common law as it existed at the time of the adoption of the Constitution is applied to provisions of the Bill of Rights derived from the common law, especially those amendments relating to trial by jury. Dimick v. Schiedt, 293 U.S. 474, 55 S. Ct. 296, 79 L. Ed. 603, 95 A.L.R. 1150 (1935).

8 Manitowoc County v. Local 986B, AFSCME, AFL-CIO, 168 Wis. 2d 819, 484 N.W.2d 534 (1992).

9 Claudio v. State, 585 A.2d 1278 (Del. 1991); People ex rel. O'Malley v. 6323 North LaCrosse Ave., 158 Ill. 2d 453, 199 Ill. Dec. 690, 634 N.E.2d 743 (1994).

10 Sitz v. Department of State Police, 193 Mich. App. 690, 485 N.W.2d 135 (1992), judgment aff'd, 443 Mich. 744, 506 N.W.2d 209 (1993).
Preexisting statutes and the common law may be used to help inform interpretation of the Idaho Constitution, but they are not the embodiment of, nor are they incorporated within, the Constitution. State v. Clarke, 165 Idaho 393, 446 P.3d 451 (2019).

11 U.S. v. Wood, 299 U.S. 123, 57 S. Ct. 177, 81 L. Ed. 78 (1936); Continental Illinois Nat. Bank & Trust Co. of Chicago v. Chicago, R.I. & P. Ry. Co., 294 U.S. 648, 55 S. Ct. 595, 79 L. Ed. 1110 (1935).

12 Dimick v. Schiedt, 293 U.S. 474, 55 S. Ct. 296, 79 L. Ed. 603, 95 A.L.R. 1150 (1935).
The English or colonial law in force at the time of the adoption of the Constitution does not always apply in construing constitutional grants of governmental power, such as the power of Congress under the bankruptcy clause. Continental Illinois Nat. Bank & Trust Co. of Chicago v. Chicago, R.I. & P. Ry. Co., 294 U.S. 648, 55 S. Ct. 595, 79 L. Ed. 1110 (1935).

13 Grosjean v. American Press Co., 297 U.S. 233, 56 S. Ct. 444, 80 L. Ed. 660 (1936).

14 Square Lake Hills Condominium Ass'n v. Bloomfield Tp., 437 Mich. 310, 471 N.W.2d 321 (1991).

15 Chicago & E.R. Co. v. Keith, 67 Ohio St. 279, 65 N.E. 1020 (1902).

16 Grosjean v. American Press Co., 297 U.S. 233, 56 S. Ct. 444, 80 L. Ed. 660 (1936).

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§ 80. Construction of terms used repeatedly in constitution

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Constitutional Law 596, 601

When the same words are used in different parts of a single constitutional or statutory enactment, the courts generally assume, absent some clear indication otherwise, that the words are used in the same sense.[1] Further, certainly this is the rule where the same word or phrase is used in different sentences within the same section.[2] However, this principle is subject to the obvious limitation that the same words may not necessarily have the same meaning attached to them where found in different parts of the same instrument since their meaning is actually controlled by the context.[3]

Where, in a constitution or statute, a word or phrase is repeated, and in one instance, its meaning is definite and clear and in another it is susceptible of two meanings, it will be presumed to have been employed in the sense in which its meaning was clear.[4] In addition, where two parts of a constitution use different language to address the same or similar subject matter, a difference in meaning is presumed as the result of using the different language.[5]

Footnotes

1 Lathrop v. Deal, 301 Ga. 408, 801 S.E.2d 867 (2017).

2 Board of Education of City of Rochester v. Van Zandt, 119 Misc. 124, 195 N.Y.S. 297 (Sup 1922), aff'd, 204 A.D. 856, 197 N.Y.S. 899 (4th Dep't 1922), aff'd, 234 N.Y. 644, 138 N.E. 481 (1923).

3 National Mut. Ins. Co. of Dist. of Col. v. Tidewater Transfer Co., 337 U.S. 582, 69 S. Ct. 1173, 93 L. Ed. 1556 (1949).

4 House v. Cullman County, 593 So. 2d 69 (Ala. 1992).

5 Harmelin v. Michigan, 501 U.S. 957, 111 S. Ct. 2680, 115 L. Ed. 2d 836 (1991).

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